

1664. December 9.

JOHN VEITCH, younger of Dawick, *against* ALEXANDER WILLIAMSON.

No 346.

Found that minority does not interrupt the running of the legal,

JOHN VEITCH pursues Williamson upon the act betwixt debtor and creditor, for paying to him of his proportional part of the mails and duties of appraised lands, as coming in *pari passu* with the defender, by an apprising within a year of his. The defender *alleged* absolutor, because he has right to the first apprising, led before the act of Parliament betwixt debtor and creditor; and therefore he has the benefit of the 21st act of the last session of Parliament, declaring, that where an appriser, for his own security had redeemed a prior apprising, and gotten right thereto before the act betwixt debtor and creditor, the said first apprising should have the same effect it would have had before the act debtor and creditor, and should not come in *pari passu*. The pursuer *answered*, That behoved only to be understood, where the second appriser had upon necessity to shun the expiring of the legal redeemed, and gotten right to the first apprising, which could not be said here, because the debtor being minor the legal had and has a long course to run.

THE LORDS sustained the defence without any such limitation, in respect of the express tenor of the act of Parliament.

*Stair, v. 1. p. 237.*

1671. June 30. BEADMEN of the Magdalen Chapel *against* GAVIN DRYSDALE.

No 347.

Prescription runs against the poor and things mortified for pious uses.

JANET RUD having mortified an yearly annualrent of a merk Scots, out of a tenement of hers to the poor Beadmen of the Magdalen Chapel, they pursue Gavin Drysdale, now heritor of the tenement, for pointing of the ground; who *alleged* absolutor, because he has bruiked the tenement free of that annualrent for more than 40 years, so that the right thereof is prescribed. It was *answered*, That prescription runs not against the poor and things mortified for pious uses. *2dly*, They are in the same condition with minors, having overseers chosen yearly. *3dly*, The years of prescription must be accounted, abating the times of pestilence and war, when there was no session. It was *answered*, That prescription was the great security of the leiges, and hath no exception by the act of Parliament, but only minority, and neither by the civil law or our custom, is the time of prescription counted *per tempus utile*, but *per tempus continuum*, in regard of the length of the long prescription.

The LORDS sustained the defence of prescription, and repelled the replies.

*Fol. Dic. v. 2. p. 122. Stair, v. 1. p. 746.*